

DEPARTMENT OF JUSTICE

TAX DIVISION

DIRECTIVE NO. 85

May 8, 1990

Re: Memoranda Authorizing Issuance of Refunds Pursuant
to Compromise or Government Concession (Form M-4457)

Under current procedures, Tax Division attorneys prepare the payment authorization memoranda (Form M-4457) which authorize the issuance of refunds arising from a compromise or Government concession in cases in which the amount of the refund is known at the time the settlement offer is accepted or the Government concession is approved. These payment authorization memoranda are currently transmitted to District Counsel or Chief Counsel, and then by District Counsel or Chief Counsel to the Service Center (District Director in 100% penalty cases). This procedure is to continue with one modification. */ Effective immediately, payment authorization memoranda are to be sent directly to the Service Center (District Director in 100% penalty cases) by the Tax Division, with a copy of the payment authorization memorandum being sent to District Counsel or Chief Counsel. Copies of revised form letters to District Counsel or Chief Counsel advising of the acceptance of an offer or the approval of a concession are attached as Attachments 1 and 2.

Instructions for the preparation of Form M-4457 are as follows:

(1) The name of the attorney preparing the form should be set forth in the upper left hand corner.

(2) The date the form is sent should be set forth on the "date" line.

(3) Except in 100% penalty cases, the memorandum should be addressed to the appropriate Service Center. Attachment 3 sets forth the states, territories and possessions served by each Service Center, and Attachment 4 sets forth the addresses of the Service Centers. In 100% penalty cases, the memorandum should be addressed to the appropriate District Director, who is usually the one that sent the original administrative file. The memorandum should be addressed: District Director, Internal Revenue Service, {city and state}, Attention: Chief, Special Procedures.

*/ The attorneys in the offices of District Counsel or Chief

Counsel will continue to prepare the payment authorization memoranda (1) in cases in which the Tax Division authorizes Chief Counsel or District Counsel to issue a refund of such amount as the Internal Revenue Service computes to be due under a compromise or a concession and (2) with respect to refunds due pursuant to judgments.

(4) The "from" line should set forth the name of the section or office chief and title.

(5) The "subject" line should set forth the name of the taxpayer and social security number or employer identification number.

(6) On the line below the "subject" line, a capital "X" should be placed in the appropriate box (i.e., "settlement," or "Government concession").

(7) The amount of the refund authorized, allocated among tax, penalty and interest and by taxable periods, should be set forth in the space between the "subject" line and the first printed paragraph. If the allocation by taxable periods is too voluminous to be set forth in the space provided on the form, the allocation should be set forth on a separate schedule to be attached to the form and the following language should be set forth on the form:

Amount of refund authorized: \$_____ in tax,
\$_____ in penalty and \$_____ in interest paid, plus
statutory interest, for the taxable periods _____ as set
forth in the attached schedule.

A sample schedule is attached as Attachment 5. If the refund is to bear statutory interest, the words "plus statutory interest" should be added after the amount of the refund. If statutory interest is not to be computed under the normal rules, or the refund is not to bear statutory interest, this information should be set forth after the amount of the refund.

(8) If an abatement of an outstanding assessment is necessary under the compromise or concession, the Service Center or District Director should be so instructed on the line below the amount of the refund authorized. Generally, in cases involving 100% penalty, language such as "abate balance of 100% penalty assessment" will be sufficient. In all other cases, the specific amount to be abated must be set forth on the form; generally, it will be necessary to obtain a current transcript of account to determine the amount to be abated.

(9) In the case of refunds pursuant to compromise, the following paragraph should be set forth below the printed sentence "The notice of adjustment should contain the following statement":

This notice of adjustment is issued pursuant to directions from the Department of Justice relative to {type of tax} {, penalty} {and} {interest paid} for {the periods in suit}. {If estate tax, omit the period in suit in the preceding sentence and state "Decedent died on _____."}

Payment of the sum mentioned herein is made and accepted in accordance with the terms of a settlement agreement whereby the case of {name of plaintiff} v. United States, {name of court}, {civil number in a district court case or Claims Court number in a Claims Court case}, filed _____, is to be dismissed with prejudice.

(10) In the case of refunds pursuant to Government concession, the following paragraph should be set forth below the printed sentence "The notice of adjustment should contain the following statement":

This notice of adjustment is issued pursuant to directions from the Department of Justice relative to {type of tax} {, penalty} {and} {interest paid} for {the periods in suit}. {If estate tax, omit the period in suit in the preceding sentence and state "Decedent died on _____."} Payment of the sum mentioned herein is made and accepted pursuant to a Government concession in the case of { name of plaintiff} v. United States, {name of court}, {civil number in a district court case or Claims Court number in a Claims Court case}, filed _____.

(11) A signature block consisting of the name of the section or office chief and title should be set forth below the last printed paragraph.

(12) The enclosure boxes on the bottom of the form should be marked with a capital "X" as appropriate and the dates set forth. It is no longer necessary to attach a transcript of account to the form. The Service Center or Special Procedures will obtain a current transcript of account. Attach a copy of the letter to Chief Counsel or District Counsel.

(13) If a compromise or concession involves more than one case not involving the same taxpayer, or one case involving multiple taxpayers, a separate Form M-4457 must be completed for each taxpayer.

A copy of a blank Form M-4457 to be used for compromises is attached as Attachment 6, and a copy of a blank Form M-4457 to be used for Government concessions is attached as Attachment 7. Sample completed forms are attached as Attachments 8 and 9. Blank forms are available in each section/office front office.

If you have any questions concerning the preparation of Form M-4457, please contact Milan Karlan (724-6567).

SHIRLEY D. PETERSON
Assistant Attorney General
Tax Division

Attachments